IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 149 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?No

2 To be referred to the Reporter or not ?No

3 Whether their Lordships wish to see the fair copy of the judgment ?No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No

5 Whether it is to be circulated to the civil judge ?No

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ZINIBEN WD/O DAHYABHAI PARSHO-TTAMBHAI RATHOD & 2 - Appellant(s)
Versus
AKHATARHUSAIN GULAMHUSAIN & 2 - Defendant(s)

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Appearance :
MR VM TRIVEDI for Appellant(s) : 1 - 3.
MR GAUTAM S PATEL for Defendant(s) : 1 - 2.
MR RR MARSHALL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal, at the instance of original claimants, is directed against the judgment and award dated 29th June, 1985, of the Motor Accident Claims Tribunal, Valsad at Navsari, for enhancement of the compensation amount. Appellant No.1 is the widowed mother of the deceased, appellant No.3 is the widow of the deceased and appellant no.2 – brother of the deceased – was a minor on the date of the accident.

2. Appellants filed claim application for Rs.1,25,000/- in respect of death of Bhagubhai Dahyabhai Rathod, aged about 23 years, who died in a motor vehicle accident on 1.12.1983. **The accident took place near Lussi-kui Medan situated in Navsari, which was earlier in the Valsad Judicial District, but which now falls within the Judicial District of Navsari**. After examining the oral and documentary evidence on record, the Tribunal held that the deceased died on account of rash and negligent driving of the truck in question by respondent No.1 which truck belonged to respondent No.2, and which was insured by respondent No.3 – United India

Insurance Co.Ltd. The Tribunal assessed the income of the deceased at Rs.400/- p.m. and deducted a sum of Rs.120/- p.m. towards the personal expenses of the deceased, leaving balance amount of Rs.280/- p.m. as the dependency benefit for the claimants. The Tribunal further bifurcated the dependency amount into two parts; Rs.165/- p.m. for the mother and minor brother of the deceased, and Rs.115/- p.m. for the widow of the deceased. This appeal is filed by all the three claimants.

3. In the facts and circumstances of the case and particularly looking to the age of the widowed mother of the deceased, who was 55 years on the date of the accident, minor brother who was 15 years on the date of accident, and the widow of the deceased who was 20 years on the date of accident, we are of the view that whatever additional dependency amount is to be awarded in this appeal, the same must go for the benefit of the widow of the deceased, and therefore, we are not further discussing the correctness or otherwise of the apportionment of the dependency benefit made by the Tribunal while passing the award.

4. On perusing the judgment under appeal, and going through the appeal memo, and also on hearing the learned counsel for respondent No.3-Insurance Company, it appears to us that while no fault could be found with the finding given by the Tribunal that, on the date of the accident the deceased was earning the income of Rs.400/- p.m., considering the fact that the deceased was only aged 23 years on the date of accident, the Tribunal was also required to consider the future income of the deceased for the purposes of assessment of damages having regard to the well settled principles enunciated by the Apex Court and recently considered by another Division Bench of this Court in First Appeal No.287 of 1988 on 23.12.2005 in the case of Ushaben Wd/o. Jashubhai Rana and others Vs. General Manager, ONGC and others, to which one of us was a party (Hon'ble Mr.Justice K.M.Mehta). For the purpose of assessing just compensation under the Motor Vehicles Act, the Tribunal is required to assess the damages not only on the basis of the present income of the deceased on the date of accident but also on the basis of the

prospects of the deceased in future. Hence, we are inclined to take the income of the deceased for the purpose of assessing compensation at Rs.600/- p.m., from which 1/3rd amount will have to be deducted i.e. Rs.200/- p.m. as the expenses the deceased would have incurred for himself had he remained alive. That makes net dependency benefit of Rs.400/- p.m. Since the tribunal had already awarded compensation to the mother and brother of the deceased by earmarking dependency benefit of Rs.165/- p.m. for them, we are of the view that the remaining dependency amount of Rs.235/- p.m. must go to the widow of the deceased. Accordingly, the compensation to be assessed for the widow will have to be calculated at Rs.235/- p.m., (Rs.400 – Rs.165) x 12 making it Rs.2,820/- as the annual dependency benefit for the widow. Considering the age of the widow, multiplier of 16 years will have to be applied, and accordingly, the total dependency benefit for the widow would work out to Rs.45,120/-.

5. Since the Tribunal had already awarded dependency benefit of Rs.11,040/- to the widow of the

deceased, that will make the balance amount of Rs.34,080/- as the additional dependency benefit to be awarded to the widow of the deceased i.e. Parvatiben wd/o. Bhagubhai Dahyabhai Rathod – appellant No.3 herein. It is true that the Tribunal had also awarded certain small amounts under different heads which we are not discussing at this stage, as the amounts for funeral expenses and pain, shock and suffering were awarded at the relevant time on the basis of the rates which were then prevailing.

6. It is clarified that the amount already awarded by the Tribunal in favour of the appellants No.1 and 2 (original claimants No.1 and 2) is not disturbed, and at the same time, they are not to be paid any additional amount under this judgment, as such additional dependency amount is only awarded to appellant No.3 - Parvatiben widow of Bhagubhai Dahyabhai Rathod.

7. The appeal is partly allowed. The award made by the M.A.C.T., at Navsari in M.A.C.P. No.315 of

1983 shall accordingly stand modified to the extent that appellant No.3 Parvatiben widow of Bhagubhai Dahyabhai Rathod shall be paid by the respondents additional dependency amount of Rs.34,080/- (over and above Rs.11,040/- awarded by the Tribunal) with 9% interest per annum on the additional amount being awarded by this judgment, from the date of the claim application (i.e. from 22.11.1983) till the date of deposit by the insurance company with the Motor Accident Claims Tribunal at Navsari, along with costs. Respondent No.3-Insurance Company shall deposit the amount by 15th September, 2006. Once the amount is deposited by the insurance company before the Tribunal, the Tribunal shall pass appropriate orders regarding investment and disbursement depending on such facts and circumstances as may be brought to the notice of the Tribunal by appellant No.3 - Parvatiben widow of Bhagubhai Dahyabhai Rathod.

(M.S. Shah, J.)

(K.M. Mehta, J.)

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